

***Form 7500***

**General Provisions  
for Subcontracts  
Section E**

**July 2000**

***LOS ALAMOS***

**Los Alamos National Laboratory**

**Los Alamos, NM 87545**



## Form 7500, Section E

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### Section E Clauses for Time-and-Materials and Labor-Hour Subcontracts

The clauses listed below apply to time-and-materials and labor-hour subcontracts. Clauses in this section appropriate to the pricing arrangement and the Subcontractor's business category shall be incorporated into subcontracts by specific citing of clause numbers in the Schedule.

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## E1, Changes

- (a) At any time, by written order, and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following:
  - (1) Drawings, designs, or specifications;
  - (2) Method of shipment or packing;
  - (3) Place of delivery; or
  - (4) Amount of University-furnished Government property.
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performing any part of the work under the subcontract, whether or not the result is specified in the change order, or otherwise affects any other terms and conditions of the subcontract, the University shall make an equitable adjustment in the ceiling price, hourly rates, delivery schedule, and other affected terms and shall modify the subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment" under this clause within 30 days from the date of receipt of the written order. However, if the University decides that the facts justify it, the University may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

## E2, Excusable Delays

- (a) Except for defaults of lower-tier subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform the subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a lower-tier subcontractor at any tier to perform or make progress; and if the cause of the failure is beyond the control of both the Subcontractor and lower-tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless
  - (1) The lower-tier subcontracted goods or services were obtainable from other sources;
  - (2) The University ordered the Subcontractor in writing to purchase these goods or services from another source; and
  - (3) The Subcontractor failed to comply reasonably with this order.



- (c) Upon the request of the Subcontractor, the University shall ascertain the facts and extent of the failure. If the University determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the University under the Termination clause of this subcontract.

## E3, Inspection

- (a) Definitions.

*"Subcontractor's managerial personnel,"* as used in this clause means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of

- (1) All or substantially all of the Subcontractor's business;
- (2) All or substantially all of the Subcontractor's operation at any one facility or separate location at which the subcontract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of the subcontract.

*"Materials"* as used in this clause includes data when the subcontract does not include the Warranty of Data clause.

- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University and covering the material, fabricating methods, work, and services under the subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (c) The University has the right to inspect and test all materials furnished and services performed under the subcontract to the extent practicable and at all places and times, including the period of performance, and in any event before acceptance. The University may also inspect the facility or facilities of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the University performs inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the subcontract, the University shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery unless accepted earlier.
- (f) At any time during subcontract performance but not later than six months (or such other time that may be specified in the subcontract) after acceptance of the services or materials last delivered under the subcontract, the University may require the Subcontractor to replace or correct services or materials that at time of delivery failed to



meet subcontract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under clause E10, Payments Under Time-and-Materials and Labor-Hour Subcontracts, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction and, when required, shall disclose the corrective action taken.

- (g)
  - (1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the University), the University may
    - (i) By subcontract or other means, perform the replacement or correction, charge to the Subcontractor any increased cost, or deduct such increased cost from any amounts paid or due under the subcontract; or
    - (ii) Terminate the subcontract for default.
  - (2) Failure to agree to the amount of increased cost to be charged to the Subcontractor shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the University may at any time require the Subcontractor to remedy by correction or replacement and without cost to the University any failure by the Subcontractor to comply with the requirements of the subcontract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or (2) the conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel have reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under the subcontract.
- (j) The Subcontractor has no obligation or liability under the subcontract to correct or replace materials and services that at time of delivery do not meet subcontract requirements, except as provided in this clause or that may be otherwise specified in the subcontract.
- (k) Unless otherwise specified in the subcontract, the Subcontractor's obligation to correct or replace Government property shall be governed by the Property clause at E12.

## **E4, Alternate Paragraph (e) to Clause E3 for Inspection at the Subcontractor's Facility**

Paragraph (e) of Clause E3 is hereby deleted and superseded by the following.



- (e) The University shall inspect for acceptance all goods to be furnished under the subcontract at the Subcontractor's facility or facilities specified in the subcontract, or at any other facility or facilities approved for such purpose in writing by the University. The Subcontractor shall inform the University when the work is ready for inspection. The University reserves the right to charge the Subcontractor any additional cost of University inspection and test when goods are not ready at the time for which inspection and test is requested by the Subcontractor.

## **E5, Limitation of University's Obligation (Time-and-Materials and Labor-Hour Subcontracts)**

- (a) It is estimated that the total payment to the Subcontractor by the University for performance of the subcontract will not exceed the estimated amount set forth in the schedule, and the Subcontractor agrees to use the best efforts to perform the work specified in the schedule and all obligations under the subcontract within such estimated amount.
- (b) The sum presently available for payment and allotted to the subcontract, the goods covered by it, and the period of performance that is estimated the allotted amount will cover are specified in the schedule. It is anticipated that from time to time additional funds will be allotted to the subcontract up to the full estimated amount. When additional funds are allotted from time to time for continued performance of the work, the parties will agree about the applicable estimated period of subcontract performance that will be covered by the funds, and the schedule will be amended accordingly. The Subcontractor agrees to perform or have performed work on the subcontract up to the point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the subcontract. The Subcontractor will not be obligated to continue performance of the work beyond that point.
- (c) The University will not be obligated to make any payment to the Subcontractor including payment with respect to lower-tier subcontracts and termination settlement costs exceeding the total amount from time to time allotted to this subcontract. However, when and to the extent that the total amount allotted to this subcontract has been increased, any invoice or voucher for time or materials with respect to a period before the increase and exceeding the amount previously allotted, will be paid as if the invoice or voucher were for time or materials with respect to a period after the increase in amount allotted.
- (d) If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed for the period set forth in the schedule, the Subcontractor will notify the University in writing within the next 30 days when the work will reach a point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause will approximate 85 percent of the total amount then allotted to the subcontract. The notice will state the estimated date when that point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the schedule. Thirty days before the end of the period specified in the schedule, the Subcontractor will advise the University in writing about the estimated amount of additional funds that will be required, on the basis of the obligation



of performance stated in paragraph (b) above for the timely performance of the work under the subcontract for such further period that may be specified in the schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the schedule or by an agreed substitute date and upon written request of the Subcontractor, the University will terminate the subcontract on that date or on a date to be specified in the request on which the Subcontractor, in the exercise of its reasonable judgment, estimates that it will have discharged its obligation to perform as stated in paragraph (b) above, whichever is later, pursuant to the provision of the Termination clause.

- (e) When additional funds are allotted from time to time for continued performance of the work under the subcontract, the parties will be covered by such funds. The provisions of paragraphs (b), (c), and (d) above will apply in like manner to the additional allotted funds and substituted date, and the subcontract will be amended accordingly.
- (f) At any time before termination, the University may allot additional funds for the subcontract and, with the consent of the Subcontractor and after notice of termination, may rescind the termination in whole or in part and allot additional funds for this subcontract.
- (g) Nothing in this clause will affect the right of the University to terminate the subcontract pursuant to the Termination clause.
- (h) For the purpose of this clause, the allotment or allotments specified in the schedule will not be decreased without the consent of the Subcontractor.
- (i) This clause will apply and paragraph (c) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will not apply until such time that an amount equal to the total estimated amount of the subcontract set forth in the schedule is allotted to the subcontract, and thereafter paragraph (d) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will apply and this clause will not apply.

## **E6, Limitation of University's Obligation Under Task Ordering Agreements**

- (a) It is estimated that the total payment to the Subcontractor by the University for performance of the subcontract will not exceed the ceiling price amounts of task orders issued pursuant to the subcontract or the ceiling price amount of the subcontract. The Subcontractor agrees to use its best efforts to perform the work specified in the task orders issued hereunder and all obligations under the subcontract within such estimated amounts.
- (b) The sum presently available for payment and allotted to the subcontract, the goods covered thereby, and the period of performance that is estimated the allotted amount will cover will be specified in the task orders. If task orders are not fully funded when they are issued, it is anticipated that from time to time additional funds will be allotted to such task orders up to their full estimated amount. When additional funds are allotted from time to time for continued performance of the work, the parties will agree about the applicable estimated period of performance that will be covered by the funds, and the task order will be amended accordingly. The Subcontractor agrees to perform or have performed work on the subcontract up to the point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the



total amount paid and payable by the University pursuant to paragraph (e) of the clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the subcontract. The Subcontractor will not be obligated to continue performance of the work beyond that point.

- (c) The University will not be obligated to make any payment to the Subcontractor including payment in respect to lower-tier subcontracts and termination settlement costs exceeding the total amount from time to time allotted to task orders under the subcontract. However, when and to the extent that the total amount allotted to a task order has been increased, any invoice or voucher for time or materials with respect to a period before to the increase and exceeding the amount previously allotted will be paid as if the invoice or voucher were for time or materials with respect to a period after the increase in amount allotted.
- (d) If the Subcontractor considers funds allotted to be inadequate to cover the work to be performed for the period set forth in a task order, the Subcontractor will notify the University in writing within the next 30 days when the work will reach a point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause will approximate 85 percent of the total amount then allotted to the task order. The notice will state the estimated date when that point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the task order. Thirty days before the end of the period specified in the task order, the Subcontractor will advise the University in writing about the estimated amount of additional funds that will be required, on the basis of the obligation of performance stated in paragraph (b) above, for the timely performance of the work under the task order for such further period that may be specified in the task order or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the task order or by an agreed substitute date and upon written request of the Subcontractor, the University will terminate the task order on that date or on a date to be specified in the request on which the Subcontractor in the exercise of its reasonable judgment estimates that it will have discharged its obligation to perform as stated in paragraph (b) above, whichever is later, pursuant to the provision of the Termination clause.
- (e) When additional funds are allotted from time to time for continued performance of the work under the subcontract, the parties will be covered by such funds. The provisions of paragraphs (b), (c), and (d) above will apply similarly to the additional allotted funds and substituted date, and the subcontract will be amended accordingly.
- (f) At any time prior to termination, the University may allot additional funds for the subcontract and, with the consent of the Subcontractor and after notice of termination, may rescind the termination in whole or in part and allot additional funds for the subcontract.
- (g) Nothing in this clause will affect the right of the University to terminate the subcontract pursuant to the Termination clause.
- (h) For the purpose of this clause, the allotment or allotments specified in a task order will not be decreased without the consent of the Subcontractor.
- (i) This clause will apply and paragraph (c) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will not apply until such time that an amount equal to the ceiling price amount of each task order is allotted to each respective task order, and



thereafter paragraph (d) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will apply and this clause will not apply.

## E7, Limitation on Withholding of Payments

If more than one clause or schedule term authorizes the temporary withholding of amounts otherwise payable to the Subcontractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or schedule term at that time, provided that this limitation shall not apply to—

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by the subcontract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the University determines that this limitation is inappropriate.

## E8, Lower-Tier Subcontracts

- (a) **Definition.** *"Lower-tier subcontract,"* as used in this clause includes but is not limited to purchase orders and changes and modifications to purchase orders. Before placing any lower-tier subcontract for furnishing any of the work called for in the subcontract, the Subcontractor shall obtain the University's written consent, except for purchase of raw material or commercial stock items.
- (b) No lower-tier subcontract placed under the subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under lower-tier cost-reimbursement subcontracts shall not exceed the fee limitations in Subsection 15.903(d) of the FAR.
- (c) The University and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.
- (d) Unless the consent or approval specifically provides otherwise, neither consent by the University to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any lower-tier subcontract terms or conditions, (2) of the acceptability of any lower-tier subcontract price or of any amount paid under any lower-tier subcontract, or (3) to relieve the Subcontractor of any responsibility for performing the subcontract.

## E9, Notice of Intent to Disallow Costs

- (a) Notwithstanding any other clause of the subcontract —
  - (1) The University may at any time issue to the Subcontractor a written notice of intent to disallow specified costs incurred or planned for incurrence under the



subcontract that have been determined not to be allowable under the terms of the subcontract; and

- (2) After receiving a notice under paragraph (1) above, the Subcontractor may submit a written response to the University with justification for allowance of the costs. If the Subcontractor does respond within 60 days, the University shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

- (b) Failure to issue a notice under this clause shall not affect the University's rights to take exception to incurred costs.

## **E10, Payments Under Time-and-Materials and Labor-Hour Subcontracts**

Upon submission of invoices or vouchers approved by the University, the University shall pay the Subcontractor as follows.

- (a) Hourly Rate.

- (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the University) to the University or designee. The Subcontractor shall substantiate vouchers by evidence of actual payment and by individual daily job time cards, or other substantiation approved by the University. Promptly after receipt of each substantiated voucher and except as otherwise provided in the subcontract and subject to the terms of paragraph (e) below, the University shall pay the voucher as approved by the University. Time permitted for payment shall begin on the later of receipt of material or the date the invoice is received at LANL Accounts Payable (Los Alamos National Laboratory, Accounts Payable, Mail Stop P240, P.O. Box 1663, Los Alamos, NM 87545).
- (2) Unless otherwise prescribed in the schedule, the University shall withhold five percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Subcontractor as provided in paragraph (f) below.
- (3) Unless the schedule prescribes otherwise, the hourly rates in the schedule shall not be varied by virtue of the Subcontractor's having performed work on an overtime basis. If no overtime rates are provided in the schedule and if overtime work is approved in advance by the University, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of the subcontract. If the schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the University.

- (b) Materials and Lower-Tier Subcontracts.



- (1) Allowable cost of direct materials shall be determined by the University in accordance with Subpart 31.2 of the FAR in effect on the date of the subcontract. Reasonable and allocable material handling costs may be included in the charge for material to the extent that they are clearly excluded from the hourly rate. Material handling costs are composed of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Subcontractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The Subcontractor shall be reimbursed for items and services purchased directly for the subcontract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. "Direct materials" as used in this clause are those materials that enter directly into the end product or that are used or consumed directly in connection with the furnishing of the end product.
  - (2) The costs of lower-tier subcontracts that are authorized shall be reimbursable costs under this clause provided that the costs are consistent with subparagraph (3) below. Reimbursable costs in connection with lower-tier subcontracts shall be limited to the amounts paid to the lower-tier subcontractor in the same manner as for goods and services purchased directly for the subcontract under paragraph (1) above; however, the requirement shall not apply to a Subcontractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the lower-tier subcontract if the costs are included in the hourly rates payable under paragraph (a)(1) above.
  - (3) To the extent able, the Subcontractor shall
    - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
    - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Subcontractor shall promptly notify the University and give the reasons. Credit shall be given to the University for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Subcontractor or that would have accrued except for the fault or neglect by the Subcontractor. The benefits lost without fault on the part of the Subcontractor or lost through the fault of the University shall not be deducted from gross costs.
- (c) Total Cost. It is estimated that the total cost to the University for the performance of the subcontract shall not exceed the ceiling price set forth in the schedule, and the Subcontractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under the subcontract within such ceiling price. If at any time the Subcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing the subcontract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the schedule, the Subcontractor shall notify the University giving a revised estimate of the total price to the University for performance of the subcontract with supporting reasons and documentation. If at any time during performing the subcontract, the Subcontractor has reason to believe that the total price to the University for performing the subcontract will be substantially greater or less than the then stated ceiling price, the Subcontractor shall so notify the University giving a revised



estimate of the total price for performance of the subcontract with supporting reasons and documentation. If at any time during performing the subcontract the University has reason to believe that the work to be required in performing the subcontract will be substantially greater or less than the stated ceiling price, the University will so advise the Subcontractor giving the then revised estimate of the total amount of effort to be required under the subcontract.

- (d) **Ceiling Price.** The University shall not be obligated to pay the Subcontractor any amount exceeding the ceiling price in the schedule, and the Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the schedule, unless and until the University shall have notified the Subcontractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under the subcontract. When and to the extent that the ceiling price set forth in the schedule has been increased, any hours expended and material costs incurred by the Subcontractor exceeding the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (e) **Audit.** At any time before final payment under the subcontract the University may request an audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts on preceding invoices or vouchers, that are found by the University not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Subcontractor as the "completion voucher" or "completion invoice" and substantiating material and upon compliance by the Subcontractor with all terms of this subcontract (including, without limitation, terms relating to patents and the terms of [f] and [g] below), the University shall promptly pay any balance due the Subcontractor. The completion invoice or voucher and substantiating material shall be submitted by the Subcontractor as promptly as practicable following completion of the work under the subcontract, but in no event later than one year (or such longer period that the University may approve in writing) from the date of completion.
- (f) **Assignment.** The Subcontractor and each assignee under an assignment entered into under the subcontract and in effect at the time of final payment under the subcontract shall execute and deliver, at the time of and as a condition precedent to final payment under the subcontract, a release discharging the University and the Government, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under the subcontract, subject only to the following exceptions:
  - (1) Specified claims in stated amounts or in estimated amounts if the amounts are not susceptible of exact statement by the Subcontractor.
  - (2) Claims, with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising from performing the subcontract and that are not known to the Subcontractor on the date of the execution of the release and of which the Subcontractor gives notice in writing to the University not more than six years after the date of the release or the date of any notice to the Subcontractor that the University is prepared to make final payment, whichever is earlier.
  - (3) Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of the University and the Government against



patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of the subcontract relating to patents.

- (g) Refunds. The Subcontractor agrees that any refunds, rebates, or credits, including any related interest, accruing to or received by the Subcontractor or any assignee that arise under the materials portion of the subcontract and for which the Subcontractor has received reimbursement shall be paid by the Subcontractor to the University. The Subcontractor and each assignee under an assignment entered into under the subcontract and in effect at the time of final payment under the subcontract shall execute and deliver, at the time of and as a condition precedent to final payment under the subcontract, an assignment to the University of such refunds, rebates, or credits, including any interest, in a form and substance satisfactory to the University.

## **E11, Additional Paragraph (h) to Clause E10 for Labor-Hour Subcontracts For Which No**

- (h) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

## **E12, Property**

- (a) University furnished Government property.
  - (1) The term "Subcontractor's managerial personnel," as used in paragraph (c) of this clause. means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-
    - (i) All or substantially all of the Subcontractor's business;
    - (ii) All or substantially all of the Subcontractor's operation at any one plant, or separate location at which the subcontract is being performed; or
    - (iii) A separate and complete major industrial operation connected with performing- the subcontract.
  - (2) The University shall deliver to the Subcontractor, for use in connection with and under the terms of the subcontract, the Government property described in the Schedule together with such related data and information as the Subcontractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "University-furnished property).
  - (3) The delivery or performance dates for the subcontract are based upon the expectation that University furnished property suitable for use will be delivered to the Subcontractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.



- (4) If University-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt, notify the University Contract Administrator, detailing the facts, and, as directed by the University Contract Administrator, and at University expense, either effect repairs or modification or return or otherwise dispose of the property. After completing directed action and upon written request of the Subcontractor, the University shall make an equitable adjustment as provided in paragraph (h) of this clause.
  - (5) If University-furnished property is not delivered to the Subcontractor by the required time or times, the University shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (b) Changes in University-furnished property.
- (1) The University may, by written notice,
    - (i) decrease the University-furnished property provided or to be provided under the subcontractor
    - (ii) substitute other University-furnished property for the property to be provided by the University or to be acquired by the Subcontractor for the Government under this subcontract. The Subcontractor shall promptly take such action as the University may direct regarding the removal, shipment or disposal of the property covered by this notice.
  - (2) Upon the Subcontractor's written request, the University shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the University has agreed in the schedule to make such property available for performing the subcontract and there is any-
    - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
    - (ii) Withdrawal of authority to use property, if provided under any other contract or lease.
- (c) Title.
- (1) The Government shall retain title to all University-furnished property.
  - (2) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under the subcontract shall pass to and vest in the Government upon the vendor's delivery of such property.
  - (3) Title to all other property, the cost of which is reimbursable to the Subcontractor, shall pass to and vest in the Government upon-
    - (i) Issuance of the property for use in subcontract performance;
    - (ii) Commencement of processing of the property for use in subcontract performance; or



- (iii) Reimbursement of the cost of the property by the University, whichever occurs first.
- (4) All University-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property", are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (d) Use of Government property. The Government property, shall be used only for performing the subcontract under which it is provided to the Subcontractor, unless otherwise provided in the subcontract or approved by the University Contract Administrator.
- (e) Property administration-
  - (1) The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of the subcontract.
  - (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
  - (3) If damage occurs to Government property, the risk of which has been assumed by the Government under this subcontract, the University shall replace the items or the Subcontractor shall make such repairs as the University directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the University Contract Administrator. When any property for which the Government is responsible is replaced or repaired, the University shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (f) Access. The Government and the University and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Limited risk of loss.
  - (1) The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under the subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
  - (2) The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage)-



- (i) That results from a risk expressly required to be insured under the subcontract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
  - (ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
  - (iii) For which the Subcontractor is otherwise responsible under the express terms of the subcontract;
  - (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
  - (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.
- (3)
- (i) If the Subcontractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the University's disapproval, withdrawal of approval, or nonacceptance of the system or program it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.
  - (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage-
    - (A) Did not result from the Subcontractor's failure to maintain an approved program or system; or
    - (B) Occurred while an approved program or system was maintained by the Subcontractor.
- (4) If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the lower-tier subcontractor's possession or control, except to the extent that the lower-tier subcontract, with the advance approval of the University Contract Administrator, relieves the lower-tier subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the subcontract.



- (5) Upon loss or destruction of, or damage to, Government property provided under the subcontract, the Subcontractor shall so notify the University Contract Administrator and shall communicate with the loss and salvage organization, if any, designated by the University Contract Administrator. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order. and furnish to the University Contract Administrator a statement of-
- (i) The lost, destroyed, or damaged Government property;
  - (ii) The time and origin of the loss, destruction, or damage;
  - (iii) All known interests in commingled property of which the Government property is a part; and
  - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the University Contract Administrator directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the University Contract Administrator, sell such property for the account of the University. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the University may directly reimburse the loss and salvage organization for any of their charges. The University shall give due regard to the Subcontractor's liability under this paragraph (g) when making any such adjustment.
- (7) The Subcontractor shall not be reimbursed for, and shall not include as an item of overhead, the cost, of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the University may have expressly required the Subcontractor to carry such insurance under another provision of the subcontract.
- (8) In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the University as directed by the University Contract Administrator.
- (9) The Subcontractor shall do nothing to prejudice the Government's or University's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the University Contract Administrator, the Subcontractor shall, at the University's expense, furnish to



the Government or the University all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government or the University) in obtaining recovery. In addition, where a lower-tier subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Subcontractor shall enforce for the benefit of the Government and/or the University, the liability of the lower-tier subcontractor for such loss, destruction, or damage.

- (h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the University may initiate an equitable adjustment in favor of the University. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. The Government and the University shall not be liable to suit for breach of contract for-
  - (1) Any delay in delivery of University-furnished Government property;
  - (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of University-furnished Government property; or
  - (4) Failure to repair or replace Government property for which the University is responsible.
- (i) Final accounting and disposition of Government property. Upon completing the subcontract, or at such earlier dates as may be fixed by the University Contract Administrator, the Subcontractor shall submit, in a form acceptable to the University, inventory schedules covering all items of Government property not consumed in performing the subcontract or delivered to the University. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the University Contract Administrator. The net proceeds of any such disposal shall be credited to the cost of the work covered by the subcontract or paid to the University as directed by the University Contract Administrator. The foregoing provisions shall apply to scrap from Government property; provided, however, that the University Contract Administrator may authorize or direct the Subcontractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Subcontractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Subcontractor's established accounting procedures.
- (j) Abandonment and restoration of Subcontractor premises. Unless otherwise provided herein, the University-
  - (1) May abandon any Government property in place, at which time all obligations of the Government and University regarding such abandoned property shall cease; and
  - (2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or subcontract completion). However, if the University-furnished Government



property (listed in the Schedule) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

- (k) Communications. All communications under this clause shall be in writing.
- (l) Overseas subcontracts. If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

## **E13, Stop-Work Order**

- (a) At any time and by written order to the Subcontractor, the University may require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either
  - (1) Cancel the stop-work order or
  - (2) Terminate the work covered by the stop-work order as provided in the Termination clause of this subcontract.
- (b) If a stop-work order issued under this clause is canceled or the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule or subcontract price, or both, and the subcontract shall be modified in writing accordingly if
  - (1) The stop-work order results in an increase in the time required for or in the Subcontractor's cost properly allocable to the performance of any part of the subcontract; and
  - (2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim submitted at any time before final payment under the subcontract.
- (c) If a stop-work order is not canceled and the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the work order is terminated for default, the University shall allow by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.



## E14, Termination

- (a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part, if
  - (1) the University determines that a termination is in the University's or the Government's interest; or
  - (2) The Subcontractor defaults in performing the subcontract and fails to cure the default within ten days (unless extended by the University) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The University shall terminate by delivering to the Subcontractor a Notice of termination specifying whether termination is for default of the Subcontractor or for the convenience of the University, the extent of termination, and the effective date. If after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination were for the convenience of the University.
- (c) After receipt of a Notice of Termination, and except as directed by the University, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) Stop work as specified in the notice.
  - (2) Place no further lower-tier subcontracts or orders except as necessary to complete the continued portion of the subcontract.
  - (3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
  - (4) Assign to the University or the Government, as directed by the University, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated. In which case the University or the Government shall have the right to settle or to pay any termination settlement or proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part under the subcontract; the approval or ratification will be final for purposes of this clause.
  - (6) As directed by the University, transfer title to the Government (if not already transferred) and deliver to the University (i) the fabricated or unfabricated goods, work in process, completed work, and goods produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the University, and (iii) the jigs, dies,



fixtures, and other special tools and tooling acquired or manufactured for the subcontract, the cost of which the Subcontractor has been or will be reimbursed under the subcontract.

- (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary or that the University may direct to protect and preserve the property related to the subcontract and that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in paragraph (6) above, provided, however, that the Subcontractor (1) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or part in any other manner directed by the University.
- (d) After expiration of the "plant clearance period," as defined in Subpart 45.6 of the FAR, the Subcontractor may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove those items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and the University will remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify the action, a termination settlement proposal may be received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended and the Subcontractor paid the agreed amount.
- (g) If the Subcontractor and the University fail to agree in whole or in part on the amount to be paid because of the termination or work, the University shall determine by information available the amount, if any, due the Subcontractor and shall pay the amount determined as follows:
- (1) If the termination is for the convenience of the University, include



- (i) An amount for direct labor hours (as defined in the Schedule) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule less any hourly rate payments already made to the Subcontractor;
  - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination not previously paid to the Subcontractor;
  - (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the University; however, the Subcontractor shall discontinue these expenses as rapidly as practicable;
  - (iv) If not included in paragraph (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract; and
  - (v) The reasonable costs of settlement of the work terminated, including
    - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (B) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
    - (C) Storage, transportation, and other costs incurred, reasonably necessary to protect or dispose of the termination inventory.
- (2) If the termination is for default of the Subcontractor, include the amounts computed under (1) above but omit
- (i) Any amount for preparation of the Subcontractor's termination settlement proposal; and
  - (ii) The portion or the hourly rate allocable to profit or any direct labor hours expended in furnishing materials and services not delivered to and accepted by the University.
- (h) The cost principles and procedures in Part 31 of the FAR in effect on the date of this subcontract shall govern all costs claimed, agreed to, or determined under this clause.
- (i) The Subcontractor shall have the right of appeal, under the Disputes clause of the subcontract, from any determination made by the University under paragraph (e) or (g) above or paragraph (k) below, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (e), (g) or (k), the University shall pay the Subcontractor (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.



- (j) In arriving at the amount due the Subcontractor under this clause, the University shall deduct
  - (1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of the subcontract;
  - (2) Any claim that the University has against the Subcontractor under the subcontract; and
  - (3) The agreed price for, or the proceeds of sale of materials, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to the University.
- (k) If the termination is partial, the Subcontractor may file with the University a proposal for an equitable adjustment of the price(s) for the continued portion of the subcontract. The University shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the University.
- (l)
  - (1) Under the terms and conditions it prescribes, the University may make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
  - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary or the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment because of a reduction in-the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by the University because of the circumstances.
- (m) The provisions of this clause relating to fee do not apply if the subcontract does not include a fee.

## **E15, Disposition of Material**

Title to all goods and materials purchased with subcontract funds shall vest in the Government. The Subcontractor shall make disposition of all residual goods and materials in accordance with the instructions provided by the University.